

COURT NO.2
THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 356 of 2002

New India Assurance Company Ltd.

.....

Appellant.

Versus

Smt. Hansmala
and others.

..... **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, **(in short the Act)** against the judgment and Award dated 17-9-2002, passed in M.A.C. Petition No. 43 of 2000, Smt. Hansmala and others Vs. Kamal Singh and another, by the Motor Accident Claims Tribunal, Uttarkashi **(hereinafter referred to as the Tribunal)**, whereby the learned Tribunal has awarded a sum of Rs. 3,13,200/- along with interest @ 9% per annum in favour of the claimants-respondent nos. 1 to 6 as against the Opposite Party No.3-appellant as mentioned in the impugned order. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the judgment and award under appeal is perverse and the impugned judgment has been assailed on the point of rash and negligent driving and also on the quantum of award.

We have heard leaned counsel for the appellant-Insurance Company, Mr. T.A.Khan, as well as learned counsel for the claimant-respondents, Mr. Pramod Belwal, and have carefully perused the entire material on record including the impugned judgment and award.

In this case, the claim petition under Section 166 of the Act has been filed by the legal heirs and dependents of Atar Singh (*the deceased*), who died in a motor accident occurred on 17.10.2000 involving Commander Jeep No. U.P. 09-535 due to rash and negligent driving by the driver of the Jeep near D.G.B.R. Camp Bhatwadi (Uttarkashi). The O.P. No. 1 Kamal Singh is the driver and O.P.No.2 is the owner of the vehicle, while the O.P.No.3-appellant is the insurer of the vehicle in question. All the O.Ps. contested the claim petition by filing their separate written statements in the case. The learned Tribunal framed necessary issues in the case. Ultimately, on the basis of evidence led by the parties, the Tribunal has found that the accident in question resulting into injuries and consequent death of the deceased had occurred due to rash and negligent driving of the driver of the Jeep. The Tribunal has not accepted the plea that the accident was the result of failure of the brakes of the vehicle involved in the accident. The Tribunal has also found that there has been no breach of policy conditions and that the vehicle was duly insured on the date of accident. Ultimately, the Tribunal found that the income of the deceased can be taken to be Rs. 2,400/- per month, therefore, after deducting 1/3rd of it, it has been held that loss of dependency was Rs. 1,600/- per month. The deceased was found to be in the age group of 40-45 years. Accordingly, multiplier of **16** has been applied to determine just compensation in the case. Thus, the Tribunal has worked out loss of dependency $1,600 \times 12 \times 16 = \text{Rs. } 3,07,200/-$. In addition, the Tribunal has also awarded Rs. 2,000/- towards funeral expenses, Rs. 2,000/- towards loss of estate, and sum of Rs. 2,000/- towards loss of consortium, and loss of love and affection, thereby total compensation worth Rs. 3,13,200/- along with simple interest @ 9% per annum has been awarded in favour of the claimants against the O.P.No.3-appellant, which gave rise to this appeal.

It has been submitted on behalf of the appellant that the finding of the learned Tribunal is erroneous on the point of rash and

negligent driving by the driver of the vehicle involved in the accident and that the amount of compensation arrived at by the Tribunal is not based on the evidence on record.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***“National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others” [(2002) 7, Supreme Court Cases, 456]***. In that case, it has been observed by the Apex Court that ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle”***. Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 (supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B.S. Verma, J.)

(P.C. Verma, J.)

28-08-2004
RCP